

Appl. No. 09/484,039
Amdt. dated April 15, 2003
Preliminary Amendment

was not prior art because the present application properly claimed domestic benefit of provisional patent application No. 60/110,217, filed on Nov. 30, 1998. [hereinafter referred to as the "**'217 provisional**"], whereas the **Rangarajan** patent has a later effective filing date of Aug. 6, 1999. Both applicant and the examiner reviewed multiple sources while on the phone with each other including 35 U.S.C. 119, the MPEP 201.11, and 37 C.F.R. 1.78 to determine if the priority claim was valid. This response memorializes applicant's understanding that because applicant properly claimed domestic benefit of the **'217 provisional** patent application in the present nonprovisional patent application, **Rangarajan** is not prior art. Therefore, applicant believes that all of the current rejections should be withdrawn and the finality of the office action dated April 3, 2003 should be vacated.

The present patent application properly claimed domestic benefit of **'217 provisional** patent application. 35 U.S.C. 119 (e) (1) states that "[a]n application for patent . . . for an invention disclosed . . . in a provisional application . . . by an inventor or inventors named in the provisional application, shall have the same effect, as to such invention, as though filed on the date of the provisional application . . . if it contains or is amended to contain a specific reference to the provisional application." This specific reference should identify the provisional patent application by its series code and serial number. (37 C.F.R. 1.78(a)(5)). Further, section 201.11 of the MPEP states that the specific reference "should appear as the first sentence of the specification following the title."

The present application has satisfied all of these requirements. First, the patent claimed in the present application is the same invention disclosed in the **'217 provisional** patent application. Second, the inventors are the same for both the present application and the **'217 provisional**. Third, the first sentence following the title of the present patent application makes a specific reference to the **'217 provisional** patent application. That claim specifically stated that "[t]his application claims the benefit of U.S. Provisional Application No. 60/110,217, filed November 30, 1998, which is hereby incorporated by reference in its entirety." Therefore, applicant believes that because all of the above mentioned requirements were satisfied, the

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present invention properly deserves the benefit of the '217 provisional filing date of Nov. 30, 1998.

All of the pending rejections are improper because they all depend upon **Rangarajan**, either directly under 35 U.S.C. 102(e) or in combination with **Wiser** under 35 U.S.C. 103(a).

Rangarajan is not prior art because its effective filing date is after the effective filing date of the present patent application.

Because all of the rejections rely on a patent that is not legally prior art, applicant believes that the finality of this office action was improper. Therefore, applicant respectfully requests the examiner to vacate the finality of this action.

CONCLUSION

In view of the above, it is believed that all outstanding issues have been resolved and all of the pending claims are now in condition for allowance. If after reviewing the above, the Examiner is of the opinion that any minor or merely formal matters remain to be attended to, the Examiner is respectfully requested to contact Applicant's undersigned representative by telephone in order to expedite any further prosecution in connection with this application.

Respectfully submitted,

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